

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

GUARDIAN PIPELINE, L.L.C.,
a Delaware limited liability company,

Plaintiff,

Case No. 08-C-28

v.

295.49 acres of land, more or less,
in Brown County, Calumet County,
Dodge County, Fond du Lac County,
Jefferson County and Outagamie County,
Wisconsin; AMBROSIUS DEVELOPMENT, LLC,
et al., and UNKNOWN OTHERS,

Defendants.

**ORDER ALLOWING GUARDIAN PIPELINE, L.L.C. TO CONDUCT SURVEYS
NECESSARY FOR THE CONSTRUCTION OF THE GUARDIAN PIPELINE**

Guardian Pipeline, L.L.C. (“Guardian”) has filed a motion for leave to conduct limited expedited discovery, in the nature of environmental and cultural and historical surveys that Guardian represents are necessary to allow the construction of the natural gas transmission pipeline that is the subject of this action. Based upon the materials submitted to the court, and the stipulation between counsel for Guardian and the landowners listed at paragraph 7 of this Order (“Stipulating Landowners”), the Court grants the motion as to the Stipulating Landowners and finds and orders as follows:

1. Before Guardian can begin construction of the Pipeline, it must complete cultural resource, wetland/waterbody and threatened/endangered species surveys on all of the properties crossed by the Pipeline.

2. Cultural resource surveys are performed for the purpose of determining whether any of the properties contain artifacts or structures of cultural or historic significance. The cultural resource surveys are typically “pedestrian surveys,” in which individuals walk the property looking for items of historic or cultural significance on the surface of the ground. Where soil visibility is restricted due to things such as forests, fallen crops, and permanent pasture land, Guardian may conduct limited “shovel testing,” which involves digging a small number holes approximately 15 to 20 inches in diameter and 20 inches deep, at intervals of approximately 50 feet apart, and sift through the soil for artifacts. The survey area is generally limited to a 200-foot corridor centered on the pipeline’s route. However where the pipeline crosses roads, wetlands, railroads, or streams, Guardian must survey additional areas, the size of which will vary depending upon the type of crossing at issue.

3. After Guardian completes the cultural resource surveys, it must submit reports summarizing the survey results to the Wisconsin State Historic Preservation Office (“SHPO”), which has 30 days to review and comment. Guardian cannot begin construction of the pipeline until SHPO completes its review and comments on the survey results.

4. Wetland/waterbody delineation surveys determine whether the pipeline would adversely affect any wetlands or waterbodies along the route. Wetland/waterbody surveys require a surveyor to visually examine potential wetlands and waterbodies, and to examine a small number of 2-3 inch diameter soil cores to verify soil types. No soil is removed from the property as part of these surveys. After Guardian completes these surveys, it must submit reports summarizing the survey findings to the Wisconsin Department of Natural Resources for review.

5. Threatened and endangered species surveys determine whether certain species are present on the Pipeline route and may be adversely impacted by construction. Threatened and endangered species surveys require a Guardian surveyor to visually inspect for plants and animals that are listed as “threatened,” “endangered,” or of “special concern” under Wisconsin law. These surveys may require more than one visit to a property to confirm the presence or absence of a species. It may be necessary to conduct some of these surveys in the early morning or at night, depending upon when a particular species is likely to be active. The surveys do not require any disturbance of soil. After Guardian completes these surveys, it must submit reports summarizing the survey findings to the Wisconsin Department of Natural Resources for review.

6. If any of the three types of surveys reveal items of cultural, historic, or environmental significance on any of the properties, Guardian may be required to adjust the Pipeline’s route to accommodate those items. To keep the project on schedule, Guardian must begin conducting the remaining surveys as soon as weather permits.

7. The following Stipulating Landowners’ properties require one or more survey.

Last Name	First Name	County	Tract No.	Additional Surveys to be Conducted		
				Cultural	Wetland / Waterbody	T/E Species
Batterman	Kevin L & McLynda R W	FD	180.00	X		X
Ditter	Ronald & Jodi	CA	296.00	X		X
Ditter	Ronald & Jodi	CA	297.00	X		
Ditter	Ronald & Jodi	CA	297.50	X		
Ditter	Ronald & Jodi	CA	306.00	X		

Last Name	First Name	County	Tract No.	Additional Surveys to be Conducted		
				Cultural	Wetland / Waterbody	T/E Species
Grosse	Peter J.	OU	548.60	X	X	
Grulke	Richard F & Terri L	DG	121.00	X		
Harrisen	Eugene & Margaret	FD	282.00	X	X	
Hayes	Steven A & Wendy L	FD	176.20	X		
Inc	Kenjo Farms	FD	169.00	X		
Karls	Kenneth J	CA	307.00	X		
Karls	Kenneth J	CA	309.00	X		
Karls	Kenneth J & Judy	CA	310.00	X		
Kazmierczak	Brian A & Kevin J	DG	162.00	X		
Lavey	Matthew R & Trudi E	FD	279.00	X		
Lavey	Matthew R & Trudi E	CA	285.00	X		
Lavey	Matthew R & Trudi E	CA	286.00	X		
Lavey	Matthew & Trudi E	CA	287.00	X		
LLC	Artesian Springs	CA	322.00	X		
LLC	Artesian Springs	CA	322.70	X	X	X
Majerus	Phillip S	FD	169.80	X		
Pahl	Darrell E & Jane F	BR	415.00	X		
Timm	Allen J.	OU	563.60	X		
Timm	Allen J.	OU	564.60	X		
Vande Hei	Allen	OU	586.60	X		
Vande Hei	Allen D.	OU	591.60	X		
Vande Hei	Allen D.	OU	593.60	X	X	
Vande Hei	Allen D.	OU	595.60	X		
Vande Hei	Allen D.	OU	596.60	X		
Vande Hei	Allen D.	OU	597.60	X	X	

Last Name	First Name	County	Tract No.	Additional Surveys to be Conducted		
				Cultural	Wetland / Waterbody	T/E Species
Vande Hei Revocable Trust	Don & Helen	OU	590.60	X		
Vande Hei Revocable Trust	Don & Helen	OU	592.60	X		
Vande Voort	Robert B.	BR	432.40	X	X	X
Vande Voort	Robert B.	BR	432.42	X		
VandenElzen	Ray & Shirley	OU	585.60	X	X	
VandenHeuvel	Daniel J & Mary	OU	545.60	X		
VandenHeuvel	Daniel J. & Mary	OU	546.60	X		
Weninger	Joseph M & Bonnie S	DG	167.00	X		
Wulff	Kevin	DG	120.00	X		
Zielicke	Leslie J	FD	169.70	X		
Zuehlke	Elton A & Phyllis M	DG	160.00	X		

THEREFORE, IT IS ORDERED that Guardian is authorized to conduct the above-listed surveys on the above-listed properties under the following conditions:

8. Guardian will provide Stipulating Landowners with at least 48-hours written notice prior to conducting surveys on a Stipulating Landowner's property, which will identify the date and nature of survey to be conducted.

9. If a Stipulating Landowner provides written notice to Guardian or Guardian's counsel of certain dates on which the landowner reasonably believes that Guardian's surveying activities will prevent the landowner from engaging in necessary activities on the property, or certain procedures that the landowner reasonably believes should be observed by Guardian in conducting a survey on the landowner's property, Guardian shall make a reasonable effort to

accommodate such landowner concerns. Any disputes that cannot be resolved by the parties shall be submitted to the court for resolution on an expedited basis. The prevailing party in any such dispute may request relief under Fed. R. Civ. P. 37.

SO ORDERED this 4th day of February, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge